IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

WP(C).No. 16038 of 2007(S)

PETITIONERS:
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1. MR. BOBAN VARGHESE, S/O. VARKEY,
ADVOCATE, AGED 42, MALEMANGALATHU HOUSE,
KOOTHATTUKULAM P.O., MUVATTUPUZHA TALUK,
ERNAKULAM DISTRICT.

2. ANTONY, S/O. JOSEPH,
AGED 37, KUZHUPILLY HOUSE, CEMITHERYMUKKU JUNCTION
ERNAKULAM NORTH.

BY ADV. SRI.JOSE JOSEPH ARAYAKUNNEL
SRI.VARGHESE PARAMBIL
SRI.ALBERT JOSEPH

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY.

2. DISTRICT COLLECTOR, IDUKKI.

BY SR. GOVT. PLEADER SMT.MEERA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.Dattu,C.J. & K.T.Sankaran,J.

W.P.(C) No. 16038 of 2007

Dated, this the 28th day of May, 2007

JUDGMENT

H.L.Dattu,C.J.

Petitioners claim that they are Indian citizens and they are interested in the welfare and well being of the people of the State of Kerala and also the economic progress of the State as a whole.

2. In this petition filed under Art.226 of the Constitution petitioner seeks the following reliefs. They are:-

i. to command the respondents not to demolish any of the existing buildings and resorts and also the roads and gardens maintained for the use of the resorts in the Munnar Hills.

ii. to command the respondents to forfeit and take over the buildings in Munnar Hills found illegally constructed and to preserve and make use of them to the benefit of the tourists thereby enriching the coffers of the State and maintaining the growth of tourism industry in Munnar Hills.

3. At the time of hearing of this writ petition for admission, learned Senior Counsel Mr. Jose appearing for the petitioners vehemently submitted before the court that their respondents by their illegal and unlawful action are destroying the resorts and buildings in the Munnar Hills and thereby affecting the tourism industry in Munnar. Apart from this, the learned counsel reiterates what has been stated in the writ petition in his own language, may be in a flavoury language, with lot of adjectives and innuendoes. In support of his contention the learned counsel also has relied upon the decisions of the Apex Court in D.C. Wadhwa v. State of Bihar - AIR 1987 SC 579 and S.V.Gupta and others v. President of India - AIR 1982 SC 149.

4. Before we advert to the contentions canvassed before us, let us notice what the Supreme Court has to say in regard to a public interest litigation and the locus standi of a person to maintain a writ petition. The Supreme Court in the case of Kushum Lata v. Union of India - (2006) 6 SCC 180) has stated:-

> "Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public interest litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". The High Court has found that the case at hand belongs to the second category. If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreak vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant borne out of wishful thinking."

The Supreme Court has further stated:-

> "It is depressing to note that on account of such trumpery proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters – government or private, persons awaiting the disposal of cases wherein

> huge amounts of public revenue or unauthorised collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, break the queue muffing their faces by wearing the mask of public interest litigation and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system." (emphasis supplied)

5. In the case of Dattaraj Nathuji Thaware v. State of Maharashtra and others - (2005) 1 SCC 590 the same view is expressed by the Apex Court.

6. Even earlier to this decision in the case of Dr. B.Singh v. Union of India and others – (2004) 3 SCC 363 the Apex Court has explained the meaning of the expression public interest litigation by referring to its earlier decision on the same topic.

7. In the instant case petitioners want to expouse the cause of the resort owners having their palatial resorts in the Munnar Hills. According to the petitioners the resort owners have built the resorts to satisfy the needs of foreign customers by spending/investing amounts only with an intention to augment the revenue of the State and not with any profit motive. Petitioners and their learned counsel wants us to believe their story. Some time as Judges, we have to hear all this without expressing our displeasure, because "we are paid to listen" is the slogan sometimes uttered outside the corridors of the court premises. The next submission of the learned counsel is that the resorts should be acquired by the State Government and make use of it for the purpose of tourism industry.

8. Except stating that the resorts have been constructed at a huge cost and the same should not be destroyed, petitioners have not stated anything else in the petition. In our view, if for any reason, the resort owners are aggrieved by the action of the State machinery in demolition of its resorts, they can very well approach the appropriate forum for appropriate reliefs, instead of making the petitioners to do shadow boxing on their behalf. This type of shadowy boxing we do not intend to encourage and, therefore, in our opinion the petition is devoid of merits and the same requires to be dismissed and it is dismissed. Ordered accordingly.

H.L.Dattu,
Chief Justice.

K.T.Sankaran,
Judge.

mt/DK.